The Combined Code on Corporate Governance: BSA Guidance for Building Societies

Introduction

A revised Combined Code on Corporate Governance was issued on 23 July 2003 and applies to reporting years beginning on or after 1 November 2003. The Combined Code is addressed to publicly quoted companies. As such, building societies do not have to comply.1

The FSA’s Interim Prudential Sourcebook for Building Societies (IPRU(BSOC)) states that building societies ‘should have regard to the Combined Code when establishing and reviewing their own corporate governance arrangements’ (section 3.2.2 G of Volume 1 of IPRU(BSOC) refers). In addition, societies are ‘encouraged to adopt’ the sample Code of Governance which is set out in Annex 3A to Chapter 3, Volume 1 of IPRU(BSOC).

This guidance is intended to assist building societies in having ‘regard to’ the Combined Code. It does not prescribe any particular course of action. Nor is the Combined Code itself prescriptive. Rather, it follows a ‘comply or explain’ approach, whereby listed public companies are encouraged to comply with the Combined Code and, where applicable, to explain in their annual report why they have not complied with a particular provision.

This guidance for building societies follows a ‘by exception’ approach, in that it refers only to those elements of the Combined Code which are either not considered to be relevant to building societies, or which raise particular issues for building societies considered worthy of discussion. The guidance is in the form of text boxes, such as this one, inserted within the relevant sections of the Combined Code.

The FSA has been consulted about the development of the BSA guidance, and welcomes this initiative on the part of the BSA. The FSA expects that the BSA guidance will be helpful in identifying the issues to be considered by building society boards when seeking to apply the latest version of the Combined Code to the different circumstances of a building society, and to their particular society. In some parts the BSA guidance suggests alternative approaches to those set out for listed public companies in the letter of the Combined Code. The FSA is content that societies following the BSA guidance demonstrate that they have had regard to the Combined Code when establishing and reviewing their corporate governance arrangements, as encouraged by the FSA's own high level guidance at IPRU(BSOC) Volume 1, 3.2.2 G.

The Building Societies Association
September 2004

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1 Although building societies that have issued PIBS are subject to the FSA Listing Rules, to which the Combined Code is appended, the Combined Code itself does not apply to PIBS-issuing societies. This is because the relevant Rule, Rule 12.43, which requires a listed company to state in its annual accounts how it has applied the principles of the Combined Code, does not apply to issuers of PIBS.
THE COMBINED CODE ON CORPORATE GOVERNANCE

July 2003
The Combined Code on Corporate Governance

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CODE ON CORPORATE GOVERNANCE

PREAMBLE

1. This Code supersedes and replaces the Combined Code issued by the Hampel Committee on Corporate Governance in June 1998. It derives from a review of the role and effectiveness of non-executive directors by Derek Higgs\(^1\) and a review of audit committees\(^2\) by a group led by Sir Robert Smith.

2. The Financial Services Authority has said that it will replace the 1998 Code that is annexed to the Listing Rules with the revised Code and will seek to make consequential Rule changes. There will be consultation on the necessary Rule changes but not further consultation on the Code provisions themselves.

3. It is intended that the new Code will apply for reporting years beginning on or after 1 November 2003.

4. The Code contains main and supporting principles and provisions. The existing Listing Rules require listed companies to make a disclosure statement in two parts in relation to the Code. In the first part of the statement, the company has to report on how it applies the principles in the Code. In future this will need to cover both main and supporting principles. The form and content of this part of the statement are not prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach. In the second part of the statement the company has either to confirm that it complies with the Code's provisions or - where it does not - to provide an explanation. This 'comply or explain' approach has been in operation for over ten years and the flexibility it offers has been widely welcomed both by company boards and by investors. It is for shareholders and others to evaluate the company's statement.

5. While it is expected that listed companies will comply with the Code's provisions most of the time, it is recognised that departure from the provisions of the Code may be justified in particular circumstances. Every company must review each provision carefully and give a considered explanation if it departs from the Code provisions.

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6. Smaller listed companies, in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant in their case. Some of the provisions do not apply to companies below FTSE 350. Such companies may nonetheless consider that it would be appropriate to adopt the approach in the Code and they are encouraged to consider this. Investment companies typically have a different board structure, which may affect the relevance of particular provisions.

7. Whilst recognising that directors are appointed by shareholders who are the owners of companies, it is important that those concerned with the evaluation of governance should do so with common sense in order to promote partnership and trust, based on - mutual understanding. They should pay due regard to companies' individual circumstances and bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces. Whilst shareholders have every right to challenge companies' explanations if they are unconvincing, they should not be evaluated in a mechanistic way and departures from the Code should not be automatically treated as breaches. Institutional shareholders and their agents should be careful to respond to the statements from companies in a manner that supports the 'comply or explain' principle. As the principles in Section 2 make clear, institutional shareholders should carefully consider explanations given for departure from the Code and make reasoned judgements in each case. They should put their views to the company and be prepared to enter a dialogue if they do not accept the company's position. Institutional shareholders should be prepared to put such views in writing where appropriate.

8. Nothing in this Code should be taken to override the general requirements of law to treat shareholders equally in access to information.

9. This publication includes guidance on how to comply with particular parts of the Code: first, "Internal Control: Guidance for Directors on the Combined Code"3, produced by the Turnbull Committee, which relates to Code provisions on internal control (C.2 and part of C.3 in the Code); and, second, "Audit Committees: Combined Code Guidance", produced by the Smith Group, which relates to the provisions on audit committees and auditors (C.3 of the Code). In both cases, the guidance suggests ways of applying the relevant Code principles and of complying with the relevant Code provisions.

10. In addition, this volume also includes suggestions for good practice from the Higgs report.

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11. The revised Code does not include material in the previous Code on the disclosure of directors' remuneration. This is because "The Directors' Remuneration Report Regulations 2002"\(^4\) are now in force and supersede the earlier Code provisions. These require the directors of a company to prepare a remuneration report. It is important that this report is clear, transparent and understandable to shareholders.


Although the Directors’ Remuneration Report Regulations do not apply to building societies, the BSA encourages societies to disclose their directors’ remuneration policy on an equivalent basis. (BSA Circular No 6108 of 29 July 2004 refers.)
CODE OF BEST PRACTICE

SECTION 1 COMPANIES

A  DIRECTORS

A.1  The Board

Main Principle

Every company should be headed by an effective board, which is collectively responsible for the success of the company.

Supporting Principles

The board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met.

All directors must take decisions objectively in the interests of the company.

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning.

Code Provisions

A.1.1 The board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.
A.1.2 The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors.

The role of the ‘senior independent director’ is discussed in the guidance to Section A.3.3 below

A.1.3 The chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman present at least annually to appraise the chairman's performance (as described in A.6.1) and on such other occasions as are deemed appropriate.

The role of the ‘senior independent director’ is discussed in the guidance to Section A.3.3 below

A.1.4 Where directors have concerns which cannot be resolved about the running of the company or a proposed action, they should ensure that their concerns are recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chairman, for circulation to the board, if they have any such concerns.

A.1.5 The company should arrange appropriate insurance cover in respect of legal action against its directors.

A.2 Chairman and chief executive

Main Principle

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.

Supporting Principle

The chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders. The chairman
should also facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

**Code Provisions**

A.2.1 The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board.

A.2.25 The chairman should on appointment meet the independence criteria set out in A.3.1 below. A chief executive should not go on to be chairman of the same company. If exceptionally a board decides that a chief executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report.

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The BSA Model Rules for Building Societies provide for the chairman of a building society to be elected by the society’s board for a twelve-month period. On completion of the initial twelve-month term, the chairman may then be re-elected for a further twelve-month term and this process may be repeated in subsequent years. In listed companies, the chairman is appointed for longer – Higgs recommended that a chairman of a listed company should be appointed for a period of not less than three years. In view of this difference in practice between building societies and listed companies, it is suggested that in applying the Combined Code to building societies, the initial election by the board of the chairman of the society is analogous to the ‘appointment’ of a chairman of a listed company, and building societies should apply the first sentence of Section A.2.2 with this in mind.

The FSA discourages societies from appointing chief executives or other executive directors to the board as non-executive directors after retirement (see: IPRU(BSOC) 3.4.4). In particular, chief executives or other executive directors should not be appointed as chairman following retirement.

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A.3 Board balance and independence

**Main Principle**

The board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

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5 Compliance or otherwise with this provision need only be reported for the year in which the appointment is made
Supporting Principles

The board should not be so large as to be unwieldy. The board should be of sufficient size that the balance of skills and experience is appropriate for the requirements of the business and that changes to the board's composition can be managed without undue disruption.

To ensure that power and information are not concentrated in one or two individuals, there should be a strong presence on the board of both executive and non-executive directors.

The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairmanship and membership of committee.

No one other than the committee chairman and members is entitled to be present at a meeting of the nomination, audit or remuneration committee, but others may attend at the invitation of the committee.

Code provisions

A.3.1 The board should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company- or group within the last five years;

- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;

- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;

- has close family ties with any of the company's advisers, directors or senior employees;

- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;

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6 A.2.2 states that the chairman should, on appointment, meet the independence criteria set out in this provision, but thereafter the test or independence is not appropriate in relation to the chairman.
• represents a significant shareholder; or

• has served on the board for more than nine years from the date of their first election.

A.3.2 Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.

A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

Individual societies should consider how many of their non-executive directors could be classed as ‘independent’, according to the criteria set out in Section A.3.1.

The BSA estimates that, broadly, the building society equivalent of ‘a smaller company’ is any society which is not among the largest 20 societies, ranked by total assets.

A.3.3 The board should appoint one of the independent non-executive directors to be the senior independent director. The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate.

Whilst some societies have appointed a senior independent director, others have felt that the concept of a senior non-executive director who is not the chairman is of limited relevance to building societies, given that one of the main roles of the senior independent director is to provide a contact point for institutional shareholders.

Societies which do not appoint a senior independent director may want to consider whether it is necessary to offer members an alternative mechanism for the handling of their concerns (i.e. to the arrangements envisaged in Section A.3.3), which acknowledge that members may not always wish to contact the chairman or an executive director. Such societies may also want to consider an alternative method for the annual appraisal of the performance of the chairman (Section A.6.1. envisages a leading role for the senior independent director in the evaluation of the performance of the chairman.)

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7 A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.
A.4 Appointments to the Board

Main Principle

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.

Supporting Principles

Appointments to the board should be made on merit and against objective criteria. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of chairmanships.

The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board.

Code Provisions

A.4.1 There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board.

A.4.2 The nomination committee should evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

A.4.3 For the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A chairman's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and included in the next annual report. No individual should be appointed to a second chairmanship of a FTSE 100 company.

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8 The requirement to make the information available would be met by making it available on request and including the information on the company’s website

9 Compliance or otherwise with this provision need only be reported for the year in which the appointment is made.
A.4.4 The terms and conditions of appointment of non-executive directors should be made available for inspection. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes.

A.4.5 The board should not agree to a full time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company.

A.4.6 A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director.

Section A.4.6 says an explanation should be given if a chairman or non-executive director has been appointed without the use of an external search agency or open advertising. In most cases, the chairman of a building society will be appointed from among the existing non-executive directors, a practice supported by the Financial Services Authority. As such, when appointing a new chairman, in order to determine whether an explanation needs to be given under Section A.4.6, societies should have regard to the process by which the chairman was originally appointed to the Board.

An alternative method of recruitment of non-executive directors for building societies – particularly smaller ones – would be to advertise such vacancies within the society’s own membership.

A.5 Information and professional development

Main Principle

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.

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10 The terms and conditions of appointment of non-executive directors should be made available for inspection by any person at the company’s registered office during normal business hours and at the AGM (for 15 minutes prior to the meeting and during the meeting).
Supporting Principles

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.

The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.

Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.

The company secretary should be responsible for advising the board through the chairman on all governance matters.

Code Provisions

A.5.1 The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, the company should offer to major shareholders the opportunity to meet a new non-executive director.

There are several references in the Combined Code to ‘the major shareholders’, ‘principal shareholders’ and ‘institutional shareholders’ (see, for example, Sections A.5.1, B.2, D.1.1, D.1.2 and E). Such concepts do not have equivalents in the memberships of building societies. However, the principles underpinning the relevant provisions of the Combined Code are relevant to societies. Main principle D.1 states that:

‘There should be a dialogue with shareholders based on the mutual understanding of objectives. The Board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place’.

Societies may wish to consider how dialogue with both shareholding and borrowing members can best be facilitated. Options pursued by some societies include the setting up of members’ panels, road shows for members, surveys of members’ opinions, member communications managers, focus groups, members’ magazines or newsletters, online forums with members and engagement in local activities.
A.5.2 The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties.

A.5.3 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

A.6 Performance evaluation

Main Principle

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

Supporting Principle

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

Code Provision

A.6.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

Where a building society has not appointed a senior independent director (see the guidance to Section A.3.3 above), it should include in its annual report an explanation of any alternative arrangements the board has made for the performance evaluation of the chairman.
A.7 Re-election

Main Principle

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The board should ensure planned and progressive refreshing of the board.

Code Provisions

A.7.1 All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election.

A.7.2 Non-executive directors should be appointed for specified terms subject to re-election and to Companies Acts provisions relating to the removal of a director. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may serve longer than nine years (e.g. three three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

REMUNERATION

B.1 The level and Make-up of Remuneration

Main Principles

Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A
significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

Supporting Principle

The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases.

Code Provisions

Remuneration policy

B.1.1 The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels. In designing schemes of performance-related remuneration, the remuneration committee should follow the provisions in Schedule A to this Code.

B.1.2 Executive share options should not be offered at a discount save as permitted by the relevant provisions of the Listing Rules.

B.1.3 Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for non-executive directors should not include share options. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the board. Holding of share options could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

Sections B.1.2 and B.1.3 refer to executive share options. Whilst it is not possible to hold share options in a building society, the references to share options would be relevant to building societies to the extent that share options in ‘connected undertakings’ (eg subsidiaries) of the society are held by building society directors. However, this is somewhat theoretical in that, at the time of writing ie July 2004, the BSA is not aware that there have ever been any such holdings by building society directors.
B.1.4 Where a company releases an executive director to serve as a non-executive director elsewhere, the remuneration report\textsuperscript{12} should include a statement as to whether or not the director will retain such earnings and, if so, what the remuneration is.

**Service Contracts and Compensation**

B.1.5 The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.

B.1.6 Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce to one year or less after the initial period.

**B.2 Procedure**

**Main Principle**

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

**Supporting Principles**

The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.

\textsuperscript{12} As required under Directors’ Remuneration Report Regulations

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Although the Directors’ Remuneration Report Regulations do not apply to building societies, the BSA encourages societies to disclose their directors’ remuneration policy on an equivalent basis. (BSA Circular No 6108 of 29 July 2004 refers.)
The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters.

See the guidance under section A.5.1 regarding ‘principal shareholders.

**Code Provisions**

B.2.1 The board should establish a remuneration committee of at least three, or in the case of smaller companies two, members, who should all be independent non-executive directors. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.

B.2.2 The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level.

B.2.3 The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors within the limits set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a committee, which might include the chief executive.

In Section B.2.3 there are references to the ‘Articles of Association’ governing the remuneration of non-executive directors. Although societies do not have Articles of Association, the Building Societies Act 1986 requires equivalent provisions to these to be included in societies' rules. In fact the Building Societies Act requirements go further, in that they apply to ‘directors’, ie executive directors, as well as non-executives.

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13 See footnote 7  
14 See footnote 8  
15 See footnote 8
B.2.4 Shareholders should be invited specifically to approve all new long-term incentive schemes (as defined in the Listing Rules) and significant changes to existing schemes, save in the circumstances permitted by the Listing Rules.

The incentive schemes referred to in Section B.2.4 are share-related. B.2.4 does not cover cash-based incentive schemes; however, societies may wish to consider including details of long-term, cash based incentive schemes in the report on directors’ remuneration within their annual report and to include a summary of this with the society’s summary financial statement.
C ACCOUNTABILITY AND AUDIT

C.1 Financial Reporting

Main Principle

The board should present a balanced and understandable assessment of the company's position and prospects.

Supporting Principle

The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.

Code Provisions

C.1.1 The directors should explain in the annual report their responsibility for preparing the accounts and there should be a statement by the auditors about their reporting responsibilities.

C.1.2 The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.

C.2 Internal Control

Main Principle

The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.

Code Provision

C.2.1 The board should, at least annually, conduct a review of the effectiveness of the group's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems.

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16 The Turnbull guidance suggests means of applying this part of the Code.
C.3 Audit Committee and Auditors

Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

Code provisions

C.3.1 The board should establish an audit committee of at least three, or in the case of smaller companies two, members, who should all be independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

C.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;

- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;

- to monitor and review the effectiveness of the company's internal audit function;

- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, reappointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;

- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;

- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to

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17 The Smith guidance suggests means of applying this part of the Code
18 See footnote 7
report to the board, identifying any matters in respect of which it considers
that action or improvement is needed and making recommendations as to the
steps to be taken.

C.3.3 The terms of reference of the audit committee, including its role and the authority
delegated to it by the board, should be made available.\footnote{See footnote 8} A separate section of the
annual report should describe the work of the committee in discharging those
responsibilities.

C.3.4 The audit committee should review arrangements by which staff of the company
may, in confidence, raise concerns about possible improprieties in matters of
financial reporting or other matters. The audit committee's objective should be to
ensure that arrangements are in place for the proportionate and independent
investigation of such matters and for appropriate follow-up action.

C.3.5 The audit committee should monitor and review the effectiveness of the internal
audit activities. Where there is no internal audit function, the audit committee
should consider annually whether there is a need for an internal audit function
and make a recommendation to the board, and the reasons for the absence of such
a function should be explained in the relevant section of the annual report.

The Financial Services Authority, in IPRU(BSOC), strongly encourages societies to
have an internal audit function and audit committee.

C.3.6 The audit committee should have primary responsibility for making a
recommendation on the appointment, reappointment and removal of the external
auditors. If the board does not accept the audit committee's recommendation, it
should include in the annual report, and in any papers recommending
appointment or re-appointment, a statement from the audit committee explaining
the recommendation and should set out reasons why the board has taken a
different position.

C.3.7 The annual report should explain to shareholders how, if the auditor provides non-
audit services, auditor objectivity and independence is safeguarded.
D RELATIONS WITH SHAREHOLDERS

D.1 Dialogue with Institutional Shareholders

Main Principle

There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.\(^\text{20}\)

Supporting Principles

Whilst recognising that most shareholder contact is with the chief executive and finance director, the chairman (and the senior independent director and other directors as appropriate) should maintain sufficient contact with major shareholders to understand their issues and concerns.

The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient.

Code Provisions

D.1.1 The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders and should expect to attend them if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

In regard to dialogue with the ‘major shareholders’, see the guidance under Section A.5.1

\(^{20}\) Nothing in these principles or provisions should be taken to override the general requirements of law to treat shareholders equally in access to information.
D.1.2 The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company, for example through direct face-to-face contact, analysts’ or brokers’ briefings and surveys of shareholder opinion.

See the guidance under Section A.5.1

D.2 Constructive Use of the AGM

Main Principle

The board should use the AGM to communicate with investors and to encourage their participation.

Code Provisions

D.2.1 The company should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution and the number of abstentions, after it has been dealt with on a show of hands. The company should ensure that votes cast are properly received and recorded.

There is a reference in Section D.2.1 to ‘abstentions’. Building societies which do not already do so, may wish to consider offering their shareholding and borrowing members the option to abstain at AGM votes. This would be consistent with the BSA’s ‘Guidance on the Preparations for and Conduct of General Meetings, Including Annual General Meetings’

D.2.2 The company should propose a separate resolution at the AGM on each substantially separate issue and should in particular propose a resolution at the AGM relating to the report and accounts.

D.2.3 The chairman should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all directors to attend.

D.2.4 The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting.
E. INSTITUTIONAL SHAREHOLDERS\textsuperscript{21}

E.1 Dialogue with companies

Main Principle

Institutional shareholders should enter into a dialogue with companies based on the mutual understanding of objectives.

Supporting Principles

Institutional shareholders should apply the principles set out in the Institutional Shareholders' Committee's "The Responsibilities of Institutional Shareholders and Agents - Statement of Principles"\textsuperscript{22}, which should be reflected in fund manager contracts.

E.2 Evaluation of Governance Disclosures

Main Principle

When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional shareholders should give due weight to all relevant factors drawn to their attention.

Supporting Principle

Institutional shareholders should consider carefully explanations given for departure from this Code and make reasoned judgements in each case. They should give an explanation to the company, in writing where appropriate, and be prepared to enter a dialogue if they do not accept the company's position. They should avoid a box-ticking approach to assessing a company's corporate

\textsuperscript{21} Agents such as investment managers, or voting services are frequently appointed by institutional shareholders to act on their behalf and these principles should accordingly be read as applying where appropriate to the agents of institutional shareholders.

\textsuperscript{22} Available at website: www.investmentuk.org.uk/press/2002/20021021-01.pdf
governance. They should bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces.

E.3 Shareholder Voting

Main Principle

Institutional shareholders have a responsibility to make considered use of their votes.

Supporting Principles

Institutional shareholders should take steps to ensure their voting intentions are being translated into practice.

Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.

Major shareholders should attend AGMs where appropriate and practicable. Companies and registrars should facilitate this.

For guidance on the references in this section to ‘institutional shareholders’ and the ‘major shareholders’, see Section A.5.1 above.
Schedule A: Provisions on the design of performance related remuneration

1. The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to enhance shareholder value. Upper limits should be set and disclosed. There may be a case for part payment in shares to be held for a significant period.

2. The remuneration committee should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in less than three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liabilities.

Guidance on share option schemes is given under Section B.1.3 above.

3. Any new long-term incentive schemes which are proposed should be approved by shareholders and should preferably replace any existing schemes or at least form part of a well considered overall plan, incorporating existing schemes. The total rewards potentially available should not be excessive.

Guidance on long-term incentive schemes is given under Section B.2.4 above.

4. Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives. Consideration should be given to criteria which reflect the company's performance relative to a group of comparator companies in some key variables such as total shareholder return.

5. Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block.

6. In general, only basic salary should be pensionable.

7. The remuneration committee should consider the pension consequences and associated costs to the company of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.
Schedule B: Guidance on liability of non-executive directors: care, skill and diligence

1. Although non-executive directors and executive directors have as board members the same legal duties and objectives, the time devoted to the company's affairs is likely to be significantly less for a non-executive director than for an executive director and the detailed knowledge and experience of a company's affairs that could reasonably be expected of a non-executive director will generally be less than for an executive director. These matters may be relevant in assessing the knowledge, skill and experience which may reasonably be expected of a non-executive director and therefore the care, skill and diligence that a non-executive director may be expected to exercise.

2. In this context, the following elements of the Code may also be particularly relevant.
   (i) In order to enable directors to fulfil their duties, the Code states that:
       • The letter of appointment of the director should set out the expected time commitment (Code provision A.4.4); and
       • The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The chairman is responsible for ensuring that the directors are provided by management with accurate, timely and clear information. (Code principles A.5).

   (ii) Non-executive directors should themselves:
       • Undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company (Code principle A.5 and provision A.5.1)
       • Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice. (Code principle A.5 and provision A.5.2)
       • Where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the board and, to the extent that they are not resolved, ensure that they are recorded in the board minutes (Code provision A.1.4).
       • Give a statement to the board if they have such unresolved concerns on resignation (Code provision A.1.4)

3. It is up to each non-executive director to reach a view as to what is necessary in particular circumstances to comply with the duty of care, skill and diligence they owe as a director to the company. In considering whether or not a person is in breach of that duty, a court would take into account all relevant circumstances. These may include having regard to the above where relevant to the issue of liability of a non-executive director.
Schedule C: Disclosure of corporate governance arrangements

The Listing Rules require a statement to be included in the annual report relating to compliance with the Code, as described in the preamble.

For ease of reference, the specific requirements in the Code for disclosure are set out below:

The annual report should record:

- a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management (A.1.1);

- the names of the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees (A.1.2);

- the number of meetings of the board and those committees and individual attendance by directors (A.1.2);

- the names of the non-executive directors whom the board determines to be independent, with reasons where necessary (A.3.1);

- the other significant commitments of the chairman and any changes to them during the year (A.4.3);

- how performance evaluation of the board, its committees and its directors has been conducted (A.6.1);

- the steps the board has taken to ensure that members of the board, and in particular the non-executive, develop an understanding of the views of major shareholders about their company (D.1.2)

The report should also include:

- a separate section describing the work of the nomination committee, including the process it has used in relation to board appointments and an explanation if neither external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director (A.4.6);

- a description of the work of the remuneration committee as required under the Directors' Remuneration Reporting Regulations 2002, and including, where an executive director serves as a non-executive director elsewhere, whether or not the director will retain such earnings and, if so, what the remuneration is (B.1.4);
• an explanation from the directors of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (C.1.1);

• a statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary (C.1.2);

• a report that the board has conducted a review of the effectiveness of the group's system of internal controls (C.2.1);

• a separate section describing the work of the audit committee in discharging its responsibilities (C.3.3);

• where there is no internal audit function, the reasons for the absence of such a function (C.3.5);

• where the board does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor, a statement from the audit committee explaining the recommendation and the reasons why the board has taken a different position (C.3.6); and

• an explanation of how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded (C.3.7).

The following information should be made available (which may be met by making it available on request and placing the information available on the company's website):

• the terms of reference of the nomination, remuneration and audit committees, explaining their role and the authority delegated to them by the board (A.4.1, B.2.1 and C.3.3);

• the terms and conditions of appointment of non-executive directors (A.4.4) (see footnote 10 on page 9); and

• where remuneration consultants are appointed, a statement of whether they have any other connection with the company (B.2.1).

The board should set out to shareholders in the papers accompanying a resolution to elect or re-elect:

• sufficient biographical details to enable shareholders to take an informed decision on their election or re-election (A.7.1).
• why they believe an individual should be elected to a non-executive role (A.7.2).

• on re-election of a non-executive director, confirmation from the chairman that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role, including commitment of time for board and committee meetings and any other duties (A.7.2).

The board should set out to shareholders in the papers recommending appointment or reappointment of an external auditor:

• if the board does not accept the audit committee's recommendation, a statement from the audit committee explaining the recommendation and from the board setting out reasons why they have taken a different position (C.3.6).